

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

VR OPTICS, LLC,

Plaintiff,

v.

PELOTON INTERACTIVE, INC., a Delaware Corporation,

Defendant.

PELOTON INTERACTIVE, INC.,

Third-Party Plaintiff,

v.

VILLENCY DESIGN GROUP, LLC, ERIC VILLENCY and JOSEPH COFFEY,

Third-Party Defendants.

No. 1:16-cv-6392(JPO)

**DECLARATION OF
PAUL S. DOHERTY III, ESQ.
IN SUPPORT OF PLAINTIFF AND
THIRD-PARTY DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT**

I, Paul S. Doherty III, Esq., hereby declare as follows:

1. I am a member of Hartmann Doherty Rosa Berman & Bulbulia, LLC and counsel to Plaintiff/Counterclaim-Defendant VR Optics, LLC and Third-Party Defendants Villency Design Group, LLC, Eric Villency and Joseph Coffey.

2. I submit this Declaration in support of Plaintiff and Third-Party Defendants' Motion for Summary Judgment. I have personal knowledge of the facts set forth herein.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Certificate of Formation of Villency Design Group LLC. (Exhibit 3 to the Transcript of the January 31, 2019 Deposition of Joseph Coffey.)

4. Attached hereto as Exhibit 2 is a true and correct copy of Excerpts from the Transcript of the January 31, 2019 Deposition of Joseph Coffey.

5. Attached hereto as Exhibit 3 is a true and correct copy of Excerpts from the Transcript of the December 7, 2018 Deposition of Eric Villency.

6. Attached hereto as Exhibit 4 is a true and correct copy of the email from John Foley dated December 4, 2015 [V_014374].

7. Attached hereto as Exhibit 5 is a true and correct copy of Excerpts from the Transcript of the November 28, 2018 Deposition of Scott Milstein.

8. Attached hereto as Exhibit 6 is a true and correct copy of Plaintiff's and Third-Party Defendants' Responses to Peloton Interactive, Inc.'s First Set of Requests for Admissions.

9. Attached hereto as Exhibit 7 is a true and correct copy of the Confidential Patent Sales Agreement dated July 8, 2016 by and between VR Optics, LLC and Microsoft Technology Licensing, LLC. (Exhibit 30 to the Transcript of the November 16, 2018 Deposition of Geoffrey Hoggard.)

10. Attached hereto as Exhibit 8 is a true and correct copy of the letter dated August 5, 2016 from Heather Lenihan to McDonnell Boehnen Hulbert & Berghoff, enclosing the Assignment of patent number 6,902,513. (Exhibit 17 to the Transcript of the January 31, 2019 Deposition of Joseph Coffey.)

11. Attached hereto as Exhibit 9 is a true and correct copy of Excerpts from the Transcript of the January 9, 2019 Deposition of Thomas ("Tom") Cortese.

12. Attached hereto as Exhibit 10 is a true and correct copy of Excerpts from the Transcript of the January 11, 2019 Deposition of John Foley.

13. Attached hereto as Exhibit 11 is a true and correct copy of the Amended Complaint for Patent Infringement filed November 19, 2018 in *Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, No. 18-cv-00390 (E.D. Tx.). (Exhibit 2 to the Transcript of the February 1, 2019 Deposition of Yony Feng.)

14. Attached hereto as Exhibit 12 is a true and correct copy of Excerpts from the Transcript of the January 24, 2019 Deposition of Graham Stanton.

15. Attached hereto as Exhibit 13 is a true and correct copy of Excerpts from the Transcript of the February 1, 2019 Deposition of Yony Feng.

16. Attached hereto as Exhibit 14 is a true and correct copy of Excerpts from the December 6, 2018 Deposition of Hisao Kushi.

17. Attached hereto as Exhibit 15 is a true and correct copy of the email from Doug Evans dated January 9, 2012. (V_000568.)

18. Attached hereto as Exhibit 16 is a true and correct copy of the email from John Foley dated March 26, 2012, and the email from Joseph Coffey dated April 2, 2012. (V_000631 and V_000642, respectively.)

19. Attached hereto as Exhibit 17 is a true and correct copy of the Design, Development and Manufacturing Agreement dated April 6, 2012 (the “2012 Agreement”). (Exhibit 28 to the Transcript of the January 31, 2019 Deposition of Joseph Coffey.)

20. Attached hereto as Exhibit 18 is a true and correct copy of the email from John Foley dated August 28, 2012. (Exhibit 6 to the Transcript of the November 28, 2018 Deposition of Scott Milstein.)

21. Attached hereto as Exhibit 19 is a true and correct copy of the email from John Foley dated September 28, 2012. (Exhibit 7 to the Transcript of the January 11, 2019 Deposition of John Foley.)

22. Attached hereto as Exhibit 20 is a true and correct copy of the email from Scott Milstein dated November 30, 2012. (MILSTEIN000003567.)

23. Attached hereto as Exhibit 21 is a true and correct copy of the email from Tom Cortese dated January 7, 2013. (MILSTEIN000003325.)

24. Attached hereto as Exhibit 22 is a true and correct copy of the Peloton & Tonic ODM Product Development and Manufacturing Agreement dated May 6, 2013. (MILSTEIN000002619.0001)

25. Attached hereto as Exhibit 23 is a true and correct copy of the email from Scott Milstein dated September 11, 2012. (MILSTEIN000003945.)

26. Attached hereto as Exhibit 24 is a true and correct copy of the email from Tom Cortese dated November 6, 2012. (PELOTON027316.)

27. Attached hereto as Exhibit 25 is a true and correct copy of the email from Tom Cortese dated November 9, 2012, with the subject, “USB connection to bike.” (PELOTON039957.)

28. Attached hereto as Exhibit 26 is a true and correct copy of the email from Tom Cortese dated November 9, 2012 with the subject, “Re: Magtonic & Innocomm Introduction.” (PELOTON039989.)

29. Attached hereto as Exhibit 27 is a true and correct copy of the email from Tom Cortese dated November 19, 2012. (PELOTON039769.)

30. Attached hereto as Exhibit 28 is a true and correct copy of the email from Tom Cortese dated December 11, 2012. (PELOTON039590.)

31. Attached hereto as Exhibit 29 is a true and correct copy of the email from Scott Milstein dated September 5, 2012. (PELOTON028923.)

32. Attached hereto as Exhibit 30 is a true and correct copy of the email from John Foley dated January 10, 2013. (MILSTEIN000003290.)

33. Attached hereto as Exhibit 31 is a true and correct copy of the email from Moya Yen dated November 21, 2013. (PELOTON053295.)

34. Attached hereto as Exhibit 32 is a true and correct copy of the July 27, 2012 Peloton Interactive, Inc. investor presentation deck. (Exhibit 20 to the Transcript of the January 9, 2019 Deposition of Thomas Cortese.)

35. Attached hereto as Exhibit 33 is a true and correct copy of the August 1, 2013 Peloton Interactive, Inc. investor presentation deck. (MILSTEIN000001834.0001.)

36. Attached hereto as Exhibit 34 is a true and correct copy of the September 15, 2015 *Financial Times* article entitled, “Sweat, subscribers and the business of spin.” (PELOTON255257.)

37. Attached hereto as Exhibit 35 is a true and correct copy of the email from John Foley to Joe Coffey dated December 8, 2015. (Exhibit 19 to the Transcript of the January 11, 2019 Deposition of John Foley.)

38. Attached hereto as Exhibit 36 is a true and correct copy of the email from John Foley to Eric Villency dated December 8, 2015. (Exhibit 18 to the Transcript of the January 11, 2019 Deposition of John Foley.)

39. Attached hereto as Exhibit 37 is a true and correct copy of the email from John Foley dated December 29, 2012. (MILSTEIN000003373.)

40. Attached hereto as Exhibit 38 is a true and correct copy of the email from Tom Cortese dated April 8, 2015. (Exhibit 18 to the Transcript of the January 9, 2019 Deposition of Thomas Cortese.)

41. Attached hereto as Exhibit 39 is a true and correct copy of the email from John Foley dated April 13, 2014. (PELOTON031492.)

42. Attached hereto as Exhibit 40 is a true and correct copy of the email from Tom Cortese dated May 9, 2014. (PELOTON030873.)

43. Attached hereto as Exhibit 41 is a true and correct copy of the email from John Foley dated May 9, 2014. (PELOTON027149.)

44. Attached hereto as Exhibit 42 is a true and correct copy of the email from Tom Cortese dated March 31, 2014. (PELOTON061510.)

45. Attached hereto as Exhibit 43 is a true and correct copy of the email from Graham Stanton dated May 23, 2014. (PELOTON063147.)

46. Attached hereto as Exhibit 44 is a true and correct copy of the email from John Foley dated March 3, 2014. (PELOTON027092.)

47. Attached hereto as Exhibit 45 is a true and correct copy of the Bike Development and Services Agreement dated June 24, 2014 (the “2014 Agreement”). (Exhibit 13 to the Transcript of the December 7, 2018 Deposition of Eric Villency.)

48. Attached hereto as Exhibit 46 is a true and correct copy of the email from Eric Villency dated September 2, 2014. (V_004324.)

49. Attached hereto as Exhibit 47 is a true and correct copy of the email from Tom Cortese dated January 6, 2016. (V_014940.)

50. Attached hereto as Exhibit 48 is a true and correct copy of the letter from John Foley to “Andy and Vince.” (Exhibit 17 to the Transcript of the January 11, 2019 Deposition of John Foley].)

51. Attached hereto as Exhibit 49 is a true and correct copy of the United States Patent No. US 6,902,513 (the “513 Patent”). (ECF Doc. No. 1-1.)

52. Attached hereto as Exhibit 50 is a true and correct copy of the Confidential Patent Purchase Agreement executed May 15, 2012 by and between Daniel R. McClure and Microsoft Corporation. (Exhibit 5 to the Transcript of the November 16, 2018 Deposition of Geoffrey Hoggard.)

53. Attached hereto as Exhibit 51 is a true and correct copy of the email from John Foley dated October 1, 2016. (Exhibit 9 to the Transcript of the January 11, 2019 Deposition of John Foley.)

54. Attached hereto as Exhibit 52 is a true and correct copy of the email from Jonathan Hangartner dated July 3, 2012. (PELOTON0287006.)

55. Attached hereto as Exhibit 53 is a true and correct copy of the email from Hisao Kushi dated March 8, 2013. (PELOTON0286984.)

56. Attached hereto as Exhibit 54 is a true and correct copy of the Information Disclosure Statement dated July 31, 2013. (Exhibit 15 to the Transcript of the January 9, 2019 Deposition of Thomas Cortese [also filed as ECF Doc. No. 1-3].)

57. Attached hereto as Exhibit 55 is a true and correct copy of the email from Leif Sigmond dated January 22, 2016. (Exhibit 8 to the Transcript of the January 31, 2019 Deposition of Joseph Coffey.)

58. Attached hereto as Exhibit 56 is a true and correct copy of the Non-Disclosure Agreement between VDG and Microsoft. (Exhibit 15 to the Transcript of the November 16, 2018 Deposition of Geoffrey Hoggard.)

59. Attached hereto as Exhibit 57 is a true and correct copy of the email from Geoffrey Hoggard dated March 15, 2016; the email from Geoffrey Hoggard dated April 6, 2016; the email from Geoffrey Hoggard dated May 11, 2016; the email from Geoffrey Hoggard dated May 25, 2016; the email from Michael Gannon dated May 26, 2016; the email from Michael Gannon dated June 28, 2016; the email from Geoffrey Hoggard dated July 6, 2016; and the email from Geoffrey Hoggard dated July 8, 2016. (Exhibits 18, 19, 21, 22, 23, 24, 27 and 29, respectively, to the Transcript of the November 16, 2018 Deposition of Geoffrey Hoggard.)

60. Attached hereto as Exhibit 58 is a true and correct copy of Excerpts from the Transcript of the November 16, 2018 Deposition of Geoffrey Hoggard.

61. Attached hereto as Exhibit 59 is a true and correct copy of the email from Joe Coffey dated August 10, 2016. (Exhibit 18 to the Transcript of the January 31, 2019 Deposition of Joseph Coffey.)

62. Attached hereto as Exhibit 60 is a true and correct copy of Peloton Interactive, Inc.'s Responses to Third-Party Defendants' Requests for Admission, Set One.

63. Attached hereto as Exhibit 61 is a true and correct copy of the email from Bud Intonato dated July 28, 2015. (Exhibit 11 to the Transcript of the January 9, 2019 Deposition of Thomas Cortese.)

64. Attached hereto as Exhibit 62 is a true and correct copy of Excerpts from the Transcript of the April 25, 2019 Deposition of Lee Rawls.

65. Attached hereto as Exhibit 63 is a true and correct copy of Excerpts from the April 1, 2019 Expert Witness Report of R. Lee Rawls.

66. Attached hereto as Exhibit 64 is a true and correct copy of the Memorandum Order of the Hon. Roy S. Payne, U.S.M.J. dated May 30, 2019. (ECF Doc. No. 59 in *Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, No. 18-cv-00390.)

67. Attached hereto as Exhibit 65 is a true and correct copy of Plaintiff VR Optics LLC's Supplemental Infringement Contentions dated October 1, 2018.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Paul S. Doherty III
Paul S. Doherty III, Esq.
HARTMANN DOHERTY ROSA
BERMAN & BULBULIA, LLC
800 Third Ave., 28th Floor
New York, NY 10022
(212) 344-4619

*Attorneys for Plaintiff/Counterclaim-
Defendant VR Optics, LLC and
Third-Party Defendants
Villency Design Group, LLC,
Eric Villency, and Joseph Coffey*

Dated: July 1, 2019